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Boston Employment Commission

June 11, 1992
10:00 a.m.

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AGENDA

- I. SUMMARY OF REGULATIONS & GOALS OF PROPOSED REVISIONS
- II. COMMENTS

BOSTON EMPLOYMENT COMMISSION

REGULATIONS

DRAFT

Table of Contents

Article I	Purpose and Applicability of Regulations
Article II	Definitions
Article III	Meetings, Voting and Quorum
Article IV	Project Classification
Article V	Periodic Review Procedure
Article VI	Corrective Action Procedure
Article VII	Procedure for Commission Project Review
Article VIII	Unfair Compliance Practices
Article IX	Project Review and Sanctions
Article X	Rules For Sanction Hearings
Article XI	Miscellaneous

ATTACHMENTS

- A. Escrow Agreement
- B. Minority and Women Owned Business Periodic Requisition Payment Specification
- C. Minority and Women Owned Business Periodic Payment Certification
- D. Marked up Workforce and Minority and Women Owned Business Specification (encouraged versus required)
- E. Proposed Adjustments to Minority and Women Owned Business Specification
- F. Boston Residents Construction Employment Plan

BOSTON EMPLOYMENT COMMISSION

DRAFT

REGULATIONS

Table of Contents

	Page
ARTICLE I: PURPOSE, AUTHORITY AND APPLICABILITY OF THE REGULATIONS	1
ARTICLE II: DEFINITIONS	1
Best Efforts	1
Commission	1
Construction Monitor	2
Covered Project	2
EDIC/JCS	2
Construction Activity	2
Escrow	3
Jobs Ordinance	3
Executive Order	3
1986 Ordinance	3
Minority Person	3
M/WBE Ordinance	3
Plan	4
Permanent Financing	4
Project	4
Standards	4
ARTICLE III: MEETINGS, VOTING AND QUORUM	5
Meetings	5
Quorum	5
Voting	5
Attendance	5
ARTICLE IV: PROJECT CLASSIFICATION	5
Project Classification Commissioner	5
Monitoring data/Demonstration of Best Efforts	5
Covered Projects less than \$100,000	6
Additional Review	6

ARTICLE V: PERIODIC REVIEW PROCEDURES	6
Introduction: 6	
Periodic Review Information Submission 7	
Weekly Submission 7	
Supplementary or Late Submission 7	
Periodic Review 7	
ARTICLE VI: CORRECTIVE ACTION PROCEDURES	9
Introduction 9	
First Corrective Action Meeting 10	
Grounds for the First Corrective Action Meeting 10	
Scheduling 10	
Notice and Conduct of Corrective Action Meeting 11	
Second Corrective Action Meeting 12	
Grounds for Second Corrective Action Meeting 12	
Notice and Conduct of Second Corrective Action Meeting 12	
Third Corrective Action Meeting; Executive Director's Meeting; Commission Subcommittee Review 13	
Grounds for Third Corrective Action Meeting 13	
Notice and Conduct 13	
Report 14-	
Commission Action 14	
ARTICLE VII: PROCEDURES FOR COMMISSION PROJECT REVIEWS	15
Grounds for review 15	
Notice 15	
Findings 15	
Subcommittee investigatory review 15	
Minority and Women Owned Business Provisions 15	
ARTICLE VIII: UNFAIR COMPLIANCE PRACTICES	16
Courses of conduct deemed to be Unfair Compliance Practices 16	
Examples 16	
Imposition of Sanctions 17	
ARTICLE IX: FINAL PROJECT REVIEW	17
Upon Project Completion 17	
Report 18	
Notice of Intent to Recommend the Imposition of Sanctions 18	
Further Review by Subcommittee 18	
Sanctions 18	
Fines 18	
Preclusion from the Award of Municipal Contracts 19	

Other Sanctions as authorized by the Jobs Ordinance or
incorporated in public contracts or plans 19
Final Decisions 19

ARTICLE X: RULES FOR HEARING BY THE BOSTON EMPLOYMENT COMMISSION	19
Scope, Constructions and Definitions 19	
Scope 19	
Construction 20	
Definitions 20	
Representation 21	
Appearance 21	
Notice of Appearance 21	
Time 21	
Timely Filing 21	
Notice of Actions 22	
Extension of Time 22	
Filings Generally 22	
Title 22	
Signatures 23	
Initiation of Sanction Hearing 23	
Notice of Intent to Recommend Sanctions 23	
Response to Notice of Intent 23	
Motions 24	
Discovery 24	
Hearings and Conferences 24	
Pre-hearing Conference 25	
Pre-hearing Agreement 25	
Submission Without a Hearing 25	
Hearings, When and Where Held 26	
Conduct of Hearings 26	
Order of Proceedings 26	
Presentation 27	
Witnesses and Evidence 27	
Evidence included 28	
Administrative Notice 28	
Transcript of Proceedings 29	
Briefs 29	
Settling the Record 29	
Decisions 30	
Reopening of Hearings 30	
Motion for Reconsideration 30	
Withdrawal of Exhibits 30	
ARTICLE XI: MISCELLANEOUS	30

ARTICLE I: PURPOSE, AUTHORITY AND APPLICABILITY OF THE REGULATIONS

These regulations are adopted and promulgated pursuant to the provision of City of Boston Ordinance, title 2, Section 754, the Ordinances of 1983, Chapter 30, and the Ordinances of 1986, Chapter 12 and 17. They are intended to interpret the provision of these ordinances and to establish procedures which conform to the applicable due process requirements. In addition, they are designed to insure compliance with the mandate of all programs under the Boston Employment Commission's jurisdiction and in so doing foster fair and equitable access to employment and training opportunities for Boston residents, minorities and women.

ARTICLE II: DEFINITIONS

For purposes of these Regulations, the following terms shall be defined as set forth in applicable Ordinances, the applicable Boston Residents Construction Employment Plan (Plan) or other contractual provisions as follows:

1. "Best Efforts" shall mean those affirmative action steps set forth in the Jobs Ordinance, the 1986 Ordinance, applicable Plans, or any other contractual provisions executed by a developer, contractor, an awarding or contracting authority, the Commission, and EDIC/JCS or any of them to assist developers or contractors in demonstrating efforts taken to attain the Standards.
2. "Commission" shall mean the Boston Employment Commission established by the Ordinance of 1986, Chapter 12, as amended.

3. "Construction Monitor" shall mean the staff member assigned by EDIC/JCS to monitor the workforce hours on a construction project, the resident, minority and female percentages and minority/women business participation on site.
4. "Covered Project" shall mean those projects within the jurisdiction of the Commission pursuant to the provisions of any law, ordinance, regulation, or contract.
5. "EDIC/JCS" shall mean the Economic Development and Industrial Corporation of Boston/Jobs and Community Services Department, the successor agency to that named in applicable ordinances pursuant to delegations of authority effected by the Mayor and predecessor agencies. EDIC/JCS as such successor agency is responsible for implementing day-to-day compliance with the Jobs Ordinance, the 1986 Ordinance, or applicable Plans.
6. "Construction Activity" shall mean all construction work performed by a general contractor and subcontractors pursuant to the provisions of the Jobs Ordinance, the 1986 Ordinance, a Plan, a Development Impact Agreement, or any other agreement executed to ensure compliance with the 1986 Ordinance or the Jobs Ordinance. Construction activity shall include all work from the commencement of the project to the acquisition of all necessary use and occupancy permits. It shall not include construction work performed by or on behalf of lease tenants.

7. "Escrow" shall mean that amount required to be deposited by a developer no later than the date upon which said developer obtains permanent financing, and which shall equal one-tenth of one percent (.1%) of the total estimated construction cost as stated in the building permit application for a Project as it may be amended from time to time. In computing such escrow amount, the estimated cost of work performed by or on behalf of lease tenants shall not be included.

8. "Jobs Ordinance" shall mean the Ordinance of 1983, Chapter 30.

9. "Executive Order" shall mean the Executive Order issued by the Mayor on July 12, 1985, entitled "Executive Order Extending the Boston Residents Jobs Policy" which requires the submission of a Boston Residents Construction Employment Plan on every project for which a Development Impact Project Plan is required under the Boston Zoning Code.

10. "1986 Ordinance" shall mean Ordinances of 1986, Chapter 12, as amended, entitled "An Ordinance Establishing the Boston Employment Commission."

11. "Minority Person" shall mean any person who is Black, Hispanic, Asian, or Native American as those terms are defined by the United States Census Bureau.

12. "M/WBE Ordinance" shall mean Chapter 14 of the Ordinances of 1987, entitled "An Ordinance Promoting Minority and Women Owned Business Enterprises in the City of Boston."

13. "Plan" shall mean the Boston Residents Construction Employment Plan required by any ordinance, the Executive Order or by a Development Impact Project Plan required or provided for by the Boston Zoning Code and the 1986 Ordinance. Each such Plan shall contain the obligation to comply with the Boston Residents Construction Employment Standards.

14. "Permanent Financing" shall mean such financing obtained by a developer at the time a building permit is obtained for a project which enables such developer to fund the construction of the project.

15. "Project" shall mean the particular Covered Project in the context of the applicable regulation

16. "Standards" shall mean the Boston Residents Construction Employment Standards established by the Jobs Ordinance, the 1986 Ordinance or a Plan, and which provide that,

- (1) At least fifty percent (50%) of all Worker-Hours on a craft-by-craft basis shall be performed by bona fide Boston Residents;
- (2) At least twenty five percent (25%) of all Worker-Hours on a craft-by-craft basis shall be performed by defined Minority Persons;
- (3) At least ten percent (10%) of all Worker-Hours on a craft-by-craft basis shall be performed by women.

ARTICLE III: MEETINGS, VOTING AND QUORUM

A. Meetings: The Commission may meet monthly or at such other times as it deems necessary for the conduct of its business.

B. Quorum: A quorum of the Commission shall consist of four (4) members.

C. Voting: Every vote of the Commission shall require the affirmative vote of no fewer than four (4) members.

D. Attendance: If any member of the Commission shall fail to attend three consecutive regular meetings of the Commission without reasonable cause, the Chair of the Commission may request that the Mayor remove such member for just cause in conformity with the Ordinance Establishing the Boston Employment Commission.

ARTICLE IV: PROJECT CLASSIFICATION

A. The Chair of the Commission may, from time to time, designate a member of the Commission to serve as Project Classification Commissioner. The Project Classification Commissioner shall review the inventory of projects then under the Commission's jurisdiction, shall establish classes of projects of differing priority and, subject to the approval of the Commission, shall sort the projects for review into classes. Such classification may be made based on such factors as cost or location of a project, or source of project funding.

B. As a result of such classification, the Commission may require from any class of projects that monitoring data or demonstration of Best Efforts be submitted in a particular manner and may, if it deems appropriate, waive the requirement of submission of particular kinds of data or require its submission in a different form, or on a different schedule.

C. For the purpose of such classification, it shall be the practice of the Commission in connection with Covered Projects where the base construction contract is for an amount less than \$100,000, unless the particular circumstances dictate otherwise, only (1) to review the initial workforce projections, (2) perform periodic review when such project is fifty percent complete, and (3) perform a close-out review.

The Commission may at any time request a contractor or developer to provide in the future information which had not been previously requested, but which could have otherwise been required, if the circumstances, in the discretion of the Commission, indicate that additional scrutiny is required.

ARTICLE V: PERIODIC REVIEW PROCEDURES

Introduction:

The following are procedures to be used in connection with quarterly or periodic reviews of projects over which the Boston Employment Commission exercises jurisdiction. They are intended to provide a framework by which developers, contractors and EDIC/JCS and Commission staff can completely and accurately assemble compliance information for review by such developers, contractors and staff as well as by the Commission in the public session. The Commission expects that all contractors and developers will fully and completely document all workforce hiring, referral, and best faith effort information and fully respond to requests made for information by staff so as to permit a full and complete record to be available for staff and Commission periodic review.

A. Periodic Review Information Submission**I. Weekly Submission**

1. As provided for by the applicable ordinance, contract specification or Boston Residents Construction Employment Plan the contractor and the developer shall, within the time required, submit all required statistical monitoring data and such other data as may be specified.
2. As provided for in the applicable contract specification or Plan, the developer and contractor shall timely submit all evidence upon which such party intends to rely to demonstrate that best efforts have been made to comply with the Standards.

II. Supplementary or Late Submission

1. In advance of a Periodic Review, contractor and developer shall be served with notice of a date, no earlier than 10 days after said notice, by which all statistical monitoring data, documentation and other material upon which the developer and contractor seeks to rely to show compliance with the Standards or to demonstrate that Best Efforts have been made to comply with such Standards shall be submitted. No submissions made after such date shall be required to be used in ascertaining a contractor's or developer's compliance with the Plan, the applicable ordinance, Plan, or contract specification for the period under review.

B. Periodic Review

- I. The Construction Monitoring staff of EDIC/JCS under the auspices of the Commission where applicable, shall compile, review and analyze all statistical monitoring data and evidence of Best Efforts

timely submitted by a contractor and developer as set forth herein. Such staff shall develop a Periodic Review Report ("Report") which summarizes such statistical monitoring data and reports evidence of Best Efforts in such form as it deems convenient.

II. Before such Report is made available to the Commission for review, the developer and contractor, upon reasonable notice, shall be afforded an opportunity to confer with the Construction Monitoring staff to review the contents of such Report and may, in writing, respond to such Report by offering any correction, addition or deletion which it deems advisable. Irrespective of whether any changes are made to the Report as a result of such response, such response shall be appended as an exhibit to the Periodic Review Report.

III. After analysis of the statistical monitoring data, the evidence of Best Efforts and the responses submitted by the contractor and developer, the staff may present the Report to the Commission with recommendations formulated for further action to be performed by the developer and contractor and may bring to the Commission's attention any action which might be available to be taken by the Commission in connection with such contractor's or developer's compliance as set forth in the Periodic Report.

When, in any Periodic Review Report, it is brought to the attention of the Commission that a condition exists which may warrant the recommendation of the imposition of sanctions by the Commission, sufficient notice shall be given to the contractor and the developer so as to provide the notice required by the 1986 Ordinance for the taking of such action, and further, such contractor and developer shall be apprised of the right to be represented by counsel at any hearing to be held by the Commission at which the recommendation of imposition of sanctions may be in order.

IV. The Commission may upon receipt of a Periodic Review Report refer such report to a standing subcommittee for compliance review or to a subcommittee specially appointed for the purpose of

further inquiry into the status of compliance of a Project by a developer and contractor. Such subcommittee shall report to the Commission at the call of the Chair.

ARTICLE VI: CORRECTIVE ACTION PROCEDURES

Introduction:

The following regulations are designed to set forth the actions or inactions of a contractor or developer which shall cause various levels of corrective action conferences to be held. Corrective action conferences are meetings of representatives of the contractor and developer and of the Construction Monitoring staff of EDIC/JCS and the Boston Employment Commission the subject of which is a discussion of the reasons for failure to meet the statistical monitoring data requirements of the Boston Resident Construction Employment Standards or of a failure to comply with other requirements or to discuss Best Efforts to comply with such Standards.

The purpose of such conference is to apprise a contractor or developer of specific compliance failures or deficiencies identified by the Construction Monitoring staff or the Commission and to discuss and agree upon a proposed plan of corrective action to reduce or remedy compliance deficiencies. Such corrective action meetings may occur as a result of a Construction Monitoring staff analysis of a required data submission or of a Commission review.

A. FIRST CORRECTIVE ACTION MEETING

I. Grounds for the First Corrective Action Meeting

The following events, circumstances or deficiencies may be deemed sufficient to require a corrective action meeting for a Project;

1. Failure of Employment Plans to contain more than a minimal number of Boston residents, minorities or women.
2. Achieving substantially less than the required percentages of resident, minority or female participation by major subcontractors or major trades.
3. Failing to file, or untimely filing of required submissions, or filing incomplete submissions.
4. Failure to execute contracts with the Minority or Women's Businesses ("M/WBE") shown on the Minority Business Utilization ("MBU") Forms within 10 days of an award of a general contract, or the use of M/WBE's not shown on the MBU forms without securing approval to substitute.
5. Evidence of the occurrence of Unfair Compliance Practices defined in Article VIII.

II. Scheduling

A First Corrective Action Meeting may be scheduled at any time after the commencement of work on a project.

III. Notice and Conduct of Corrective Action Meeting

1. Upon the occurrence of any of the events described in Section A.1 of this Article or other matters relating to compliance with the Plan or the Ordinance deemed sufficiently severe to warrant the convening of a corrective action meeting for a Project, the contractor and developer shall be given written notice of such compliance matter so identified. *The general contractor shall notify the subcontractor(s) of this meeting where applicable.* The notice shall contain a date and time for the meeting and a proposed agenda. The date, time and agenda can be changed by mutual agreement.
2. At the First Corrective Action Meeting, the Construction Monitor assigned to the Project shall identify the deficiencies to be remedied and the parties shall agree as to the specific action(s) to be taken by each party and the dates by which such action is to be accomplished.
3. As soon as practicable after such meeting is concluded, but not later than fifteen (15) days thereafter, the Construction Monitor shall prepare minutes and transmit them to the contractor and developer. Such minutes shall include the specific action(s) agreed to be taken and the dates by which such action(s) is to occur. The contractor and developer shall signify their concurrence with the accuracy of such minutes by returning a signed copy of such minutes within five days of the receipt of such minutes. If such contractor or developer dispute any portion of such minutes, they shall notify the Construction Monitor of such disagreements in writing within twenty days of the date of meeting. Failure to respond to such minutes within said twenty days shall be deemed to be concurrence in the same and they shall be binding on such developer and contractor as if they were timely signed.

B. SECOND CORRECTIVE ACTION MEETING

I. Grounds for Second Corrective Action Meeting

A Second Corrective Action Meeting may be held for the following reasons:

1. Failure to comply with actions agreed to be taken as a result of the First Corrective Action Meeting or failure to do so within the time prescribed.
2. Failure to demonstrate substantial improvement in previously identified areas of non-compliance.
3. New or continued areas of compliance deficiencies.

II. Notice and Conduct of Second Corrective Action Meeting

1. The Second Corrective Action Meeting shall be noticed and conducted in the same manner as the first such meeting. The minutes which are circulated for concurrence as set forth in Section A.III.3. of this Article shall state that failure to comply with the steps agreed to be taken within the time required may result in the project being reviewed by the Assistant Director of the Boston Residents Jobs Policy, the Executive Director of the Boston Employment Commission, or the presentation of the Project's compliance status to a Commission subcommittee in connection with the recommendation of the imposition of sanctions.

C. THIRD CORRECTIVE ACTION MEETING; EXECUTIVE DIRECTOR'S MEETING; COMMISSION SUBCOMMITTEE REVIEW**I. Grounds for Third Corrective Action Meeting**

1. If a developer or contractor shall fail to comply with some or all of the actions agreed to be taken at the First or Second Corrective Action Meetings, or if compliance deficiencies occur which, in the judgement of the Chair of the Commission so require, a Third Corrective Action Meeting may be held. Such a meeting shall be conducted by the Assistant Director, the Executive Director of the Commission, or his/her designee, or by a Subcommittee of the Commission. *Determinations herein shall be based on information received prior to Notice of the Third Corrective Action Meeting.*

II. Notice and Conduct

Such a meeting shall be noticed in the manner set forth in Section A.III.1. The Assistant Director, Executive Director or the Commissioner designated as the Subcommittee Chair shall preside. The contractor and developer, in addition to the information contained in the Notice of Meeting, shall be informed that information assembled at this meeting may be considered in connection with a presentation to the Commission regarding a finding of non-compliance sufficient for the recommendation of the imposition of sanctions.

III. Report

Within fifteen (15) days of the conclusion of such Third Corrective Action Meeting, the Assistant Director, Executive Director or the Subcommittee Chair as the case may be, shall report his/her findings made as a result of the matters which were the subject of the meeting, any recommendation reached and his/her recommendations for further action to be taken. Said report shall be sent to the developer and contractor for their concurrence, comments or objections to be returned in the time and manner as aforesaid in Section A.III.3, and their concurrence, comments or objections, together with the report of the Executive Director or Subcommittee Chair shall be filed with the Commission for its review and action, if any.

D. COMMISSION ACTION

I. Notwithstanding the foregoing procedures, the Commission or the Chair, in its discretion, may at any time direct that the Executive Director, or a Subcommittee of the Commission, cause a review to be held in the nature of a Third Corrective Action Meeting irrespective of whether there have been previous corrective action meetings, in cases in which the Committee or the Chair find that deficiencies in statistical monitoring data, or the demonstration of Best Efforts indicate the need for such review. In addition, where the circumstances so warrant, additional or follow-up meetings may be held by the Construction Monitoring staff with respect to issues previously considered without such meetings being designated.

II. Upon a review conducted by the Executive Director or a Commission Subcommittee, the Commission may take any further action permitted by law, ordinance, regulation or agreement including the recommendation of the imposition of sanctions. The Developer and Awarding Authority shall be notified of the findings of the Subcommittee and its recommendations.

ARTICLE VII: PROCEDURES FOR COMMISSION PROJECT REVIEWS

A. The Commission may conduct reviews of Covered Projects with information compiled by the Construction Monitoring staff of EDIC/JCS analyzed in the manner set forth in the 1986 Ordinance and in accordance with the procedures established in Article V, Periodic Review Procedure.

B. When the Commission schedules a Commission meeting to review a Project, it shall provide developers and contractors notice of the date and time of such meeting. The notice shall be sent at least three (3) days prior to the review and shall be accompanied by the most recent Periodic Review Report, if any, which shall contain a report of the Project's performance in relation to the Standards and Best Efforts. Such notice shall also apprise the developer and contractor of the right to be present at, and participate in the review, and of the right to be represented by counsel.

C. The Commission may, after reviewing a Project's adherence to the Standards and Best Efforts, make findings and recommendations. If the Commission makes a preliminary determination of compliance, it shall notify the parties of the determination and no further action will be taken at that time by the Commission. The Commission by so determining shall not preclude its taking any such further action as the facts and circumstances may require. If the Commission makes a preliminary determination of noncompliance, it may recommend that a Notice of Intent to Impose and Recommend Sanctions be issued.

D. The Commission in its discretion may, by appointing one or more of its members to a subcommittee, conduct an investigatory review of any Project. The Commissioner(s) shall review all pertinent information gathered by the subcommittee and recommend further action to the Commission if appropriate.

E. The Commission shall monitor the compliance with Minority and Women Owned Business provisions contained in contracts. The

Commission shall receive compliance information periodically and make recommendations to the awarding or contracting authority regarding remedies for noncompliance.

ARTICLE VIII: UNFAIR COMPLIANCE PRACTICES

There is hereby declared to exist patterns or courses of conduct deemed to be Unfair Compliance Practices. They shall consist of actions or practices engaged in by a developer or contractor the primary purpose of which is to be deceptive or to misstate the actual circumstances surrounding facts relating to a Project which are the subject of the Commission's review. The following actions or practices are hereby deemed to be unfair compliance practices. They are offered by way of illustration and are not intended to be all inclusive.

1. Transferring residents, minorities or women from job to job primarily to demonstrate greater statistical adherence to the Standards than would otherwise be shown;
2. Assigning residents, minorities or women in such a way that because of rules or practices (for example, after assignment to a job, a worker returns to a disadvantageous position on the list) such resident, minority or women customarily receives job assignments of short duration.
3. Submitting false statements concerning the residence or racial or ethnic background of a worker.
4. Including a Minority or Women-owned Business on a bid form or a Minority Business Utilization form where the status of such Minority or Women-owned Business is known to be false or where, upon facts and circumstances known or apparent to the contractor, such contractor should have known such status to be false.

5. Failure to utilize M/WBE firms originally identified to meet contract requirements.
6. Substituting M/WBE firms originally identified without authorization according to procedures as outlined in contract specifications.
7. Failure to make timely deposit of the escrow.

The finding of an Unfair Compliance Practice by the Commission may be grounds for the recommendation of the imposition of sanctions notwithstanding the demonstration of Best Efforts to comply with the Standards.

ARTICLE IX: FINAL PROJECT REVIEW

A. Upon receipt of a Certificate of Use and Occupancy with respect to a completed Covered Project, the Commission shall cause a review to be made of the:

- (1) statistical monitoring information and M/WBE final documentation received in connection with the Project;
- (2) all documentation received concerning the demonstration of Best Efforts to comply with the overall Standards;
- (3) the Periodic Review Reports made throughout the life of the Project;
- (4) the minutes, reports and results, if any, of Corrective Action Meetings or Subcommittee reviews of the Project.

B. The Commission shall cause a report to be made with respect to the compliance with the Standards.

- (1) If the report indicates that the project is not in compliance with the Standards or Best Efforts, the Commission shall issue to the contractor or developer or Awarding Authority a Notice of Intent to Recommend the Imposition of Sanctions pursuant to Article X hereof.
- (2) If the Commission determines that additional information is necessary, it shall appoint and direct a Subcommittee of the Commission to undertake further review in public session and report its preliminary findings to the Commission.
- (3) If such Subcommittee Review results in the preliminary finding that non-compliance exists, and that sanctions should be considered, and the Commission accepts such recommendation, the Commission shall issue a Notice of Intent as previously described.
- (4) If such Subcommittee Review results in a preliminary finding of compliance, that finding shall be received and reviewed at a public hearing of the Commission and, if accepted and adopted by the Commission, it shall forthwith by vote certify that the Project is in compliance and shall issue a certificate to that effect if requested by the contractor or developer.

C. When, after a hearing is held pursuant to Article X hereof, the Commission has issued a decision finding non-compliance, either at final project review or otherwise, it may recommend the imposition of any or all of the following:

1. Fines to a maximum for DIPPS of three hundred dollars (\$300.00) for each day of non-compliance by such developer or contractor or for public projects one-tenth of one percent for each

day of non-compliance by such developer or contractor, as determined by the Commission, as set forth in Section Six of the 1986 Ordinance, to be charged, in the first instance, against the escrow fund, provided however that should the escrow fund be exhausted, such fines may be levied against any other available asset of the developer or contractor;

2. Preclusion from the award of municipal contracts, participation in Covered Projects or competitions for public development rights for a period of up to three (3) years, provided that this sanction may only be recommended at the completion of the Covered Project; or
3. Any other sanction authorized by the Jobs Ordinance or incorporated in public contracts or Plans. Such recommendation of the imposition of sanctions shall be in addition to any other action or sanction authorized by law or contract.

D. The Commission's findings of compliance or noncompliance with respect to a Covered Project, as well as, any recommendation of the imposition of sanctions by the awarding or contracting authority are final decisions which may be appealed as provided by law.

ARTICLE X: RULES FOR HEARING BY THE BOSTON EMPLOYMENT COMMISSION

A. Scope, Constructions and Definitions.

1. Scope

1. General. These rules shall govern the conduct of the Boston Employment Commission hearings in which the subject is the consideration of the recommendation of the imposition of sanctions.

- II. **Construction**. These rules shall be construed to secure a just and speedy determination of every issue before the Commission.
- III. **Definitions**. The following words when used in this Article, except as otherwise required by the context shall have the following meaning:
 1. "Authorized Representative". An attorney, legal guardian or other person authorized by a Party to represent him/her in a Sanction Hearing.
 2. "Commission". The Boston Employment Commission.
 3. "Construction Monitor". The staff member assigned by EDIC/JCS to monitor the workforce hours on a construction project, and the resident, minority and female percenatges.
 4. "M/WBE Information and Referral Coordinator". The staff member assigned by EDIC/JCS to monitor and report Minority/Business Enterprise participation on a project.
 5. "Papers". All written communications filed in connection with a Sanction Hearing, including motions, pleadings, and other documents.
 6. "Party". The specifically named Person(s) whose rights, duties, performance or compliance is being determined in a Sanction Hearing, or any Person allowed by the Commission, or entitled by law to intervene in such Hearing.
 7. "Person". An individual or legal entity.

8. "Petitioner". The Party who initiates a Request for Sanction Hearing.
9. "Presiding Officer". The individual(s) authorized by law or duly designated by the Commission to conduct the Sanction Hearing.
10. "Sanction Hearing". A hearing held to consider whether to recommend the imposition of sanctions.

B. Representation.

- I. Appearance. An individual may appear in his/her own behalf. A duly authorized officer or employee may represent a corporation, an authorized member may represent a partnership or joint venture, and an authorized trustee may represent a trust. Any Party in a Sanction Hearing shall have the right to be accompanied, represented and advised by an Authorized Representative.
- II. Notice of Appearance. An appearance shall be made in every Sanction Hearing by filing a written notice with the Commission. Such notice shall contain the name, address and telephone number of the individual(s) representing the Party if the Party is other than an individual, and shall contain the name, address and telephone number of any Authorized Representative of the Party.

C. Time.

- I. Timely Filing. Papers required or permitted to be filed under these regulations or any provision of the applicable law must be filed at the Commission office or other such place as the Commission shall designate within the time limits for such filing as are set by Commission regulation or other

provision of law. Papers filed in the following manner shall be deemed to be filed as set forth herein:

1. Hand-delivery during business hours. Papers hand-delivered during regular business hours shall be deemed filed on the day delivered.
2. Hand-delivery during non-business hours. Papers hand-delivered at times other than during regular business hours shall be deemed filed on the next regular business day.
3. Mailing. Papers placed in U.S. mail shall be deemed filed on the date received or on the second business day following the date of postmark.

II. Notice of Actions. Notice of actions and other communications from the Commission shall be presumptively deemed received upon the day of hand-delivery or if mailed, two (2) days after the postmarked date.

III. Extension of Time. It shall be within the discretion of the Commission or Presiding Officer, for good cause shown, to extend any time limit contained in these rules. All requests for extensions of time made in writing before the expiration of the original or previously extended time period shall, upon the filing of such motion, toll the time period sought to be extended until the Commission or Presiding Officer acts on the motion.

D. **Filings Generally.**

- I. Title. Papers filed with the Commission shall reference the Project and the name of the Person in whose behalf the filing is made.

II. Signatures. Papers filed with the Commission shall be signed and dated by the Party on whose behalf the filing is made or by Party's Authorized Representative and shall state the address and telephone number of such Party or Authorized Representative. This signature constitutes a certification by the signer that (s)he has read the document, knows the content thereof, and that such statements are true, that it is not interposed for delay, and that if the document has been signed by an Authorized Representative that (s)he has full power and authority to do so.

E. **Initiation of Sanction Hearing.**

- I. Notice of Intent to Recommend Sanctions. Whenever the Commission shall consider the recommendation of the imposition of sanctions against any Person, such action shall be commenced by the issuance of a Notice of Intent to Recommend Sanctions ("Notice of Intent") setting forth the grounds for such action. Such a Notice of Intent shall contain a statement of the basis for action by the Commission, the nature of the relief sought, the right of the Party to whom the Notice of Intent is directed to request a hearing, and the right to be represented by counsel at such hearing. The Notice of Intent shall contain the date, time and place of the meeting of the Commission at which the consideration of the recommendation of such sanctions is to be entertained, which shall be at least twenty one (21) business days after the date of such Notice of Intent.
- II. Response to Notice of Intent Any Party to whom a Notice of Intent is directed may, but shall not be required to file with the Commission a Response to the Notice of Intent ("Response") which shall state clearly and concisely any dispute, defense or mitigation such Party may have with respect to the matters contained in the Notice of Intent.

F. Motions.

- I. **Presentation/Objection to Motion.** A Party by motion may request of the Commission or Presiding Officer any order or action not inconsistent with law or these regulations. Motions may be made in writing at any time after the receipt of the Notice of Intent, and may be made in writing or orally during a Sanction Hearing. Each motion shall set forth grounds for the desired order or action and state whether a hearing is desired.
- II. The Commission or Presiding Officer may rule on a motion without holding a hearing if delay would seriously injure a Party, or if the motion involves a matter as to which the presentation or testimony or oral argument would not advance the Commission's or Presiding Officer's understanding of the issues involved or if disposition without a hearing would best serve the public interest.

G. Discovery.

Requests for Documents. Any Party against which sanctions are sought to be recommended or imposed may request through the Commission all documents which will be sought to be introduced before the Commission in connection with the recommendation of the imposition such sanctions. Such requests shall be made in writing and filed with the Commission no later than seven (7) days after the date of Notice of Intent or with the Request for Hearing. No later than ten (10) days after the receipt of such request, the Commission shall cause a response to be made and shall designate a time no later than three (3) days before the date of the Sanction Hearing, and a place at which the documents to be produced shall be available for inspection or copying. A reasonable fee for assembly and reproduction of the documents requested may be charged to the Party requesting them.

H. Hearings and Conferences.

I. Pre-hearing Conference. The Commission or Presiding Officer may upon its own initiative or upon the application of any Party, call upon the Parties to appear for a conference to consider:

1. the limitation, amplification or clarification of the issues;
2. the possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;
3. agreement as to the numerical accuracy of any form of statistical monitoring data;
4. the possibility of agreement disposing of all or any of the issues in dispute; and
5. such other matters as may aid in the disposition of the Sanction Hearing.
6. the scheduling of a Pre-hearing Conference shall be solely within the discretion of the Commission or Presiding Officer.

II. Pre-hearing Agreement Those matters agreed upon by the Parties shall be electronically recorded in the presence of the Parties and/or reduced to writing and shall be signed by the Parties, and shall thereafter constitute part of the record.

III. Submission Without a Hearing. Any Party may elect to waive a hearing and to submit its case upon the record. Submission of a case without a hearing does not relieve the Parties from the necessity of proving the facts supporting its allegations or defenses.

IV. Hearings, When and Where Held. Hearings will be held at the time set forth in the Notice of Intent at the location designated by the Commission. Upon motion of any Party and upon good cause shown, the Commission or Presiding Officer may in its discretion advance, continue or postpone a case for hearing.

V. Conduct of Hearings.

1. General. Hearings shall be as informal as may be reasonable and appropriate under the circumstances.
2. Decorum. All Parties, Authorized Representatives, witnesses and other Persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in any court. Where such decorum is not observed, the Commission or Presiding Officer may take appropriate action.
3. Duties of Presiding Officer. The Presiding Officer shall conduct the hearing, make all decisions regarding the admission or exclusion of evidence or any other procedural matters, and administer an oath or affirmation to all witnesses.

VI. Order of Proceedings.

1. Opening. Except as otherwise provided by law, it shall be the usual practice that in proceedings resulting from Commission Action, the Commission shall open.
2. Discretion of the Commission/Presiding Officer. Where evidence is peculiarly within the knowledge of one Party, or in cases in which the Sanction Hearings have been consolidated, or where there are multiple

Parties, the Presiding Officer or Commission may direct who shall open and shall designate the order of the presentation.

VII. Presentation.

1. **Rights of Parties.** All Parties have the right to present evidence, cross-examine, make objections, bring motions and make oral arguments. Cross-examination shall occur immediately after any witness' testimony has been received. Whenever appropriate, the Presiding Officer or Commission shall permit redirect and recross.
2. **First Presentation.** The Party opening the Sanction Hearing shall have the right to present its position through evidence and testimony first.
3. **Second Presentation.** The Party taking the position contrary to that of the Party opening shall have the right to present its position upon completion of the opening Party's case.

VIII. Witnesses and Evidence.

1. **Oath.** A witness' testimony shall be under oath or affirmation.
2. **Evidence and Burden of Proof.** Unless otherwise provided by any law, the Commission need not observe the rules of evidence observed by courts but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Weight to be given evidence presented

will be within the discretion of the Commission or Presiding Officer. All evidence regarding workforce, M/WBE information or other percentages or the accuracy of statistical monitoring data, if possible, shall be the subject matter of a stipulation agreed upon as a result of Pre-hearing Conference or otherwise. If the Parties fail to agree on the accuracy of such statistical monitoring data, each Party may offer its presentation of the same. The burden of proof with respect to any claim, defense or mitigation shall be on the proponent of such claim, defense or mitigation, and such burden shall be satisfied by a preponderance of the evidence.

3. **Offer of Proof.** An offer of proof made in connection with an objection taken to a ruling of the Presiding Officer rejecting or excluding proffered testimony shall consist of a statement of the substance of the evidence which the Party contends would be adduced by such testimony; and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

IX. **Evidence included.** All evidence, including any records, investigative reports, documents, and stipulations which is to be relied upon in making a Decision must be offered and made part of the record. Documentary evidence may be received in evidence in the form of copies or excerpts, or by incorporation by reference if the Commission deems the same to be convenient.

X. **Administrative Notice.** The Commission or Presiding Officer may take notice of any fact which may be judicially noticed by the courts of this Commonwealth or of general technical or scientific facts within the Commission's or Presiding Officer's

specialized knowledge only if the Parties are notified of the material so noticed and are given an opportunity to contest the facts so noticed.

XI. Transcript of Proceedings.

1. **Recordings and Transcripts.** Testimony and argument at the hearing may, if requested in advance, be recorded electronically. Any Party, upon motion, may order a stenographer to transcribe the proceedings, at his own expense. In such event, a stenographic record shall be provided to the Commission or Presiding Officer at no expense to the Commission, and upon such other terms as the Commission or Presiding Officer shall order.
2. **Correction of Transcript.** Upon notice or otherwise, the Commission or Presiding Officer may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of the proceeding.

XII. Briefs. At the close of the taking of the testimony, the Commission or Presiding Officer may entertain the filing of Memoranda.

XIII. Settling the Record.

1. **Contents of Record.** The record of the proceeding may consist of the following items: pleadings, pre-hearing conference memoranda, magnetic tapes, orders, transcripts, exhibits, and other papers or documents which the Commission or Presiding Officer has specifically designated to be made a part of the record. The record shall at all reasonable times be available for inspection by the Parties.

2. **Evidence After Completion.** No evidence shall be admitted after completion of a hearing or after a case has been submitted on the record, unless otherwise ordered by the Presiding Officer.

XIV. **Decisions.** Final Decisions. Every final Decision shall be in writing and shall be signed by those members of the Commission voting in favor of the same as required by the Ordinance or applicable contract provision. Every final Decision shall contain a statement of the reasons therefor, including a determination of every issue of fact or law necessary to the Decision.

XV. **Reopening of Hearings.** On its own motion or on motion of any Party, the Commission or Presiding Officer may at any time before a final Decision is issued request that the hearing be reopened for the purpose of receiving new evidence.

XVI. **Motion for Reconsideration.** Any Party may file a Motion for Reconsideration, setting forth specifically all factual grounds or provision of law relied upon to sustain such Motion, within ten (10) days from the date a copy of the Decision is mailed to the Parties by the Commission or Presiding Officer.

XVII. **Withdrawal of Exhibits.** After a Decision has become final and all appeal periods have lapsed the Commission or Presiding Officer may in its discretion, upon motion, permit the withdrawal of original exhibits or any part thereof by the Party or person entitled thereto.

ARTICLE XI: MISCELLANEOUS

A. The provisions of these Regulations and Procedures are severable, and if any shall be held invalid, unconstitutional or otherwise unenforceable by any court of competent jurisdiction, the decision of

the court shall not affect or impair the remaining provisions.

B. In the case of any inconsistency between these Regulations, and the Jobs Ordinance, the 1986 Ordinance, or a Plan, the provisions of the Ordinances, or Plan, shall govern.

Boston Employment Commission

Rules and Regulations

Attachments

<u>Table of Contents</u>	<u>Page</u>
ATTACHMENT A: Escrow Agreement	1
Exhibit A: Receipt of Escrow Form (to Commission)	7
Exhibit B: Receipt of Escrow Form (to Developer)	9
ATTACHMENT B: M/WBE Payment Specification	11
ATTACHMENT C: M/WBE Periodic Payment Certification	12
ATTACHMENT D: Marked Up Workforce and M/WBE Specification (Encouraged v. Required)	13
ATTACHMENT E: Proposed Adjustments to M/WBE Specification	14
I. Article III, [B], (3)	14
II. Article III, [B], (5)	14
III. Article III, [C], (1)	14
IV. Non-Compliance III [D]	15
V. Sanction/Debarment III [E]	16
ATTACHMENT F: Boston Residents Construction Employment Plan	17
Section I: Definitions	18
Section II: General Requirements	19
Section III: Procedures	22
Section IV: Determination of Compliance	25
Section V: Sanctions	26
Section VI: Miscellaneous	27
EXHIBIT "A": Corrective Action Regulations: First Meeting Notice	30
EXHIBIT "B": Corrective Action Regulations: Minutes of Meeting	31

ATTACHMENT A

ESCROW AGREEMENT

This Agreement is made as of the _____ day of _____, 199____, between _____ ("Developer"), the Boston Employment Commission ("Commission"), and, _____ ("Escrow Agent").

Reference is made to the following facts:

A. On or about _____, 199____, _____, as Developer, entered into a Boston Residents Construction Employment Plan ("Plan") with the Commission and the BRA under which said Developer agreed to perform certain obligations.

B. By the terms of said Plan, Developer is required to deposit into escrow the amount of \$ _____ (Escrow Amount) for the benefit of the City to serve as security for compliance by the Developer with the obligations as set forth in the Plan.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties agree:

1. The Developer agrees to deposit with the Escrow Agent and the Escrow Agent agrees to hold and release in accordance with the terms of this Agreement, the Escrow Amount.

2. The Escrow Agent agrees to release the Escrow Amount as follows:

- (a) to the Commission three (3) business days following receipt by the Escrow Agent of a duly executed copy of a certificate in the form annexed hereto as Exhibit A; or
- (b) To the Developer, three (3) business days following the receipt by the Escrow Agent of a duly executed copy of a certificate in the form annexed hereto as Exhibit B.

Upon release of the Escrow Amount pursuant to clauses (a) or (b) of this Section 2, this Agreement shall terminate and no party hereto shall have further recourse hereunder to the other. Neither the execution nor termination of this agreement, except as provided herein, shall affect the rights of the BRA, the City or the Developer under the plan.

3. Any instruction, notice or other communication given hereunder shall be effective if in writing and given by registered or certified mail, return receipt requested, or delivered in hand to the party entitled to receive the same, with a copy to all other parties, addressed as follows:

(a) If to the Developer:

Attn:

(b) If to the BRA:

Boston Redevelopment Authority
One City Hall Plaza
Boston, Massachusetts 02201
Attn: Director

(c) If to the Escrow Agent:

_____ Bank

Boston, Massachusetts 02110
Attn:

(d) If to the Commission:

Boston Employment Commission
43 Hawkins Street
Boston, Massachusetts 02201
Attn: Executive Director

or to other such address or addresses as the party to receive such instruction, notice or other communication shall from time to time designate by like notice to all of the other parties. Any instruction, notice or other communication shall be effective only upon receipt.

4. The Escrow Agent shall be obligated to perform only such duties as are specifically set forth in this Agreement and shall not be liable for any action

taken, omitted or suffered by him in good faith and believed by him to be authorized or within the discretion or right or powers conferred upon him hereby and may conclusively rely and shall be protected in acting or refraining from acting in reliance upon an order, an opinion of counsel or upon any certificate, request or other documents believed by him to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall to be bound by any modifications of this Agreement unless such modification is in writing and signed by the parties hereto unless such modification is in writing and signed by the parties hereto unless the Escrow Agreement shall have given prior written consent thereto. If a controversy arises between one or more of the parties hereto, or between any of the parties hereto and any person not a party hereto as whether or not or to whom the Escrow Agent shall be uncertain as to his duties or rights hereunder or shall receive instructions with respect to the Escrow Amount which on his opinion are in conflict with any of the provisions of this Agreement, the Escrow Agent shall be entitled to refrain from taking any action other than to keep safely the Escrow Amount until he shall have been directed otherwise by a writing signed by the Developer, the Commission and the BRA, or by final order to a court of competent jurisdiction over the dispute. The Escrow Agent shall incur no liability hereunder whatsoever except in the event of willful misconduct or gross negligence as long as he acted in good faith and the parties hereto shall indemnify the Escrow Agent against all liability hereunder except for that occasioned by his willful misconduct or gross negligence.

5. The Escrow Agent may resign at any time upon not less than fifteen (15) days prior written notice to the Developer, the Commission and the BRA, provided that a successor Escrow Agent shall have been appointed prior to the effective date of such resignation. If a successor Escrow Agent shall not have been appointed by the Developer and the Commission within ten (10) days after giving such notice of resignation, the resigning Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent shall have been appointed prior to the effective date of such resignation. If a successor Escrow Agent shall not have been appointed by the Developer and the Commission within ten (10) days after giving such notice of resignation, the resigning Escrow Agent may petition the court of competent jurisdiction for the appointment of a successor Escrow Agent. Every successor Escrow Agent appointed hereunder shall execute and deliver to the Developer, the BRA, the Commission and the resigning Escrow Agent an instrument accepting such appointment, and thereupon such resignation shall become effective and the successor Escrow Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers and duties of the resigning Escrow Agent; but on the request of Developer and the Commission or the successor Escrow Agent, such resigning Escrow Agent shall execute and deliver an instrument transferring to such successor Escrow Agent all the rights and powers of the resigning Escrow Agent, and shall duly transfer and deliver to such successor Escrow Agent the Escrow Amount held by such resigning Escrow Agent

hereunder.

6. This Agreement shall bind and inure to the benefit of the parties, their successors and assigns and shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

DEVELOPER: _____

By: _____
Name, Title

BOSTON EMPLOYMENT COMMISSION

By: _____
Name, Title

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Name, Title

ESCROW AGENT: _____

By: _____
Name, Title

Exhibit A

_____ , 199_____

[ESCROW AGENT] Bank

Street
Boston, Massachusetts 02110

Attention:

RE: Escrow Agreement Dated _____ , 199_____

Greetings:

The undersigned hereby certifies as follows:

1. That he/she is the _____ of the Boston Employment Commission of the City of Boston and is duly authorized to deliver this Certificate;
2. That _____, Developer under Boston Resident Construction Employment Plan ("Plan") dated _____, 199_____ by and among said Developer, the Commission and the Boston Redevelopment Authority has failed to fulfill its obligations and defaulted under such Plan; and

3. That the Commission has given notice of such failure to said Developer as required by the Plan, held a hearing thereon, and determined that the imposition of sanctions should be recommended in the amount of \$ _____.

4. The Boston Redevelopment Authority has concurred in such recommendation and has imposed sanction in the amount of \$ _____.

Accordingly, \$ _____ of the Escrow Amount held by you pursuant to the referenced Escrow Agreement should be released to the Boston Employment Commission, and the balance of the Escrow Amount, \$ _____ may be forthwith returned to the Developer.

Executed this _____ day of _____, 199_.

City of Boston, acting by and through its Boston Employment Commission

By: _____
Name, Title

Exhibit B

, 199
[ESCROW AGENT] Bank
Street
Boston, Massachusetts

ATTENTION:

RE: Escrow Agreement Dated _____, 199

Greetings:

The undersigned hereby certifies as follows:

1. That he/she is _____ of the Boston Employment Commission of the City of Boston and is duly authorized to deliver this Certificate;

2. That _____, Developer, under the Boston Residents Construction Employment plan ("Plan") was required to maintain and Escrow in the amount of \$ _____ for the benefit of the City of Boston to assure compliance with the Plan; and

3. The Boston Employment Commission has determined that the Developer has compiled with the Plan; and

4. The obligation to maintain such escrow now ceases to exist under the Plan and the Developer may now be paid the amount of such escrow.

Executed this _____ day of _____, 199_.

City of Boston, acting through the Boston Employment Commission

By: _____
Director

ATTACHMENT B

MINORITY AND WOMEN OWNED BUSINESS

PAYMENT SPECIFICATION

1. In addition to the Periodic Request for Payment provided for in Article ___, Section ___, for any such request in which an amount is requested representing work performed or materials supplied by a Minority or Woman Owned Business Enterprise (M/WBE) in accordance with Article ___, Section ___, "M/WBE CONTRACT PROVISIONS" the general contractor, on a form substantially similar to Exhibit ___ shall cause each such Minority and Women Business Enterprise to certify as to the base contract amount, the percent complete of such work, the amount requisitioned or received on prior periodic payment requisitions, and the amount which is to be paid from the periodic payment requisition of which such certification is made a part. The general contractor shall also certify the accuracy of each such percentage of completion calculation and the amounts of paid or requisitioned. Failure to include such exhibit ___ and such certification by such general contractor shall cause such periodic payment request to be deemed incomplete and not in proper form within the meaning of G.L. Chapter 30, Section 39G.

ATTACHMENT C

**MINORITY AND WOMEN OWNED
BUSINESS PERIODIC PAYMENT
CERTIFICATION**

I, _____, on behalf of [General Contractor] do hereby certify that the following Minority and/or Women owned Businesses(M/WBE) have completed the percentage of the contracts as set forth below, have received to date or have requisitioned in prior payment requisitions the amounts set forth, and shall receive the amounts set forth below from this periodic payment requisition.

Contractor	Base Contract Amount	Percent Complete	Paid or Requisitioned	Requested in this Requisition

[General Contractor]

On behalf of the subcontractor or supplier so indicated, I certify that the above information is accurate with respect to such subcontractor or supplier.

[M/WBE #1]

by: _____

[M/WBE #2]

by: _____

[M/WBE #3]

by: _____

ATTACHMENT D

MARKED UP WORKFORCE AND MINORITY AND WOMEN OWNED

BUSINESS SPECIFICATION (ENCOURAGED V. REQUIRED)

~~AMENDMENT FOR SUBCONTRACTORS~~ ~~MAINTAINING THE CONTRACTOR'S COMPLIANCE WITH THE REQUIREMENTS OF THIS ARTICLE~~
~~awarded pursuant to Massachusetts General Laws Chapter 17, sections 44A-J, and General Laws Chapter 30, sections 30A-40, the general contractor shall impose such sanctions and penalties upon its subcontractors for violation of this article, including suspension, termination and cancellation of existing contracts, as may be imposed or ordered pursuant to this Article by the Awarding Authority.~~

ARTICLE III: MINORITY/WOMEN BUSINESS UTILIZATION (M/WBU)

A. EXPENDITURES ON MINORITY/WOMEN BUSINESS ENTERPRISES:

1. The amount required to be expended on Minority/Women Business Enterprises by the general contractor shall be determined in accordance with the City's policy on Minority/Women Business Participation in impacted and non-impacted areas, as defined in the Executive Order and Ordinance on "Minority and Women Business Enterprise Development," effective December 31, 1987, which states in part:

"A minimum of fifteen percent (15%) of the eligible contract dollars of each construction related contract awarded during each fiscal year shall be awarded to certified MBE's. The fifteen percent minimum shall be increased to thirty percent (30%) of the eligible contract dollars of each construction related contract let within an impacted area.

A minimum of five percent (5%) of the eligible contract dollars of each construction related contract awarded during each fiscal year shall be awarded to certified WBE's."

A Minority/Women Business Enterprise which merely acts as agent or passive conduit in connection with the provision of services or materials, will not be counted towards a contractor's minority/women business percentage requirement.

B. GENERAL PROCEDURES FOR COMPLIANCE WITH THE MINORITY/WOMEN BUSINESS UTILIZATION REQUIREMENTS:

1. A pre-bid conference may be conducted by the Awarding Authority in order to familiarize bidders with the purpose and operation of this Article.
2. A Minority/Women Business may apply to the Compliance and Enforcement Division for a determination of its minority or women status for the purposes of performing work on any contract funded by the City to which this Article applies. If the firm has been certified by SOMWBA, the firm must submit a completed City of Boston Certification Application (See Appendix V) and its SOMWBA

10/1/94
~~Letter of Certification.~~ If the M/WBE is not certified by the City of Boston or by the State Office of Minority Women Business Assistance (SOMWBA), the firm must submit a completed City of Boston Certification Application (Appendix V) and all required support documentation. Following submission of these materials, an investigation will be undertaken and a certification decision rendered by the Compliance and Enforcement Division.

3. The Compliance and Enforcement Division shall publish annually a Directory of Minority/Women Enterprises that conform to the definition of Minority/Women Business Enterprises provided in Article I and will provide updates quarterly. The Compliance and Enforcement Division may make available to prospective bidders other information regarding Minority/Women Business Enterprises for the purpose of complying with this Article. This section shall not be construed as limiting bidders in selecting or negotiating with Minority/Women Business Enterprises not listed in the Directory for the purpose of complying with this Article.

4. Within five (5) working days after the receipt of general bids, the low bidder must submit a completed MBE Utilization Form(s) (see Appendix II) and a completed WBE Utilization Form(s) (Appendix II) to the Compliance and Enforcement Division of the Office of Jobs and Community Services located at 43 Hawkins Street, Boston, MA 02114, covering each minority/women business enterprise to be used to meet the requirements contained in the contract documents. If a firm is certified as a minority-women owned firm, that firm may propose to work as either minority or women owned or both for each contract by declaring its status on the Minority Business Utilization Form or the Women Business Utilization Form (MBU-F or WBU-F).

The General Contractor is responsible for meeting the aggregate percentage on the project which is a minimum of twenty percent (20%) (15% minority business and 5% women business) or thirty five percent (35%) (30% minority business in impacted areas and 5% women business). Participation of a minority/women owned firm may not be "double-counted" in order to comply with this goal.

Within ten (10) working days from the receipt of general bids, the Compliance and Enforcement Division shall complete its review of the completed M/WBU Forms submitted by the low bidder and shall inform the Awarding Authority in writing whether the bidder is in compliance with the minority/women business enterprise requirements (proper signatures, dollar amounts, certification procedures) of the contract documents.

If the M/WBU Forms submitted by the low bidder do not meet the requirements of the contract documents, or if no forms are submitted, the Compliance and Enforcement Division shall so inform the Awarding Authority within the ten (10) business day period mentioned above. The low bidder may thereafter be considered ineligible to receive the contract, and the Awarding

Authority may require that the next lowest eligible and responsible bidder provide the above described forms within five (5) working days after being notified by the Awarding Authority to do so.

X 5. Bidders may exercise their own judgment in selecting the Minority/Women Business Enterprise to perform any portion of the work or to be a supplier of goods or services. In the event that the bidder selects a minority/or women business that is not included in the Minority/Women Business Directory as amended and provided by the Compliance and Enforcement Division, then a Certification Application completed by the non-certified business must be filed with the Compliance and Enforcement Division within five (5) business days after the opening of general bids.

C. COMPLIANCE AFTER CONTRACT AWARD:

X 1. CONTRACT WITH THE MINORITY/WOMEN BUSINESS ENTERPRISE: The contractor shall execute a contract with each Minority/Women Business Enterprise it has listed on the Minority/Women Business Utilization Forms (M/WBU-Form) for the performance of work or the supply of goods and services, except as provided in Section D, paragraph 2, below. The contractor shall submit a copy of the contract to the Awarding Authority and the Compliance and Enforcement Division as soon as it is executed.

After the Minority/Women Business Enterprise has completed its contractual obligations, the contractor shall submit to the the Compliance and Enforcement Division Final Minority/Women Business Utilization Forms with copies of cancelled checks showing that the Minority Women/Business Enterprise has fulfilled its contractual obligations and has been paid.

The Awarding Authority shall notify the Compliance and Enforcement Division in writing when a contractor has requested final payment. The Compliance and Enforcement Division shall notify the Awarding Authority within forty-eight (48) hours of receipt of said notification if there are any outstanding issues of non-compliance with this Article.

2. SUBSTITUTION: In the event that a contractor desires to substitute a Minority/Women Business Enterprise for the one named on the MBU-Form or WBU-Form, the contractor shall request, in writing, authorization to substitute from the Compliance and Enforcement Division.

The contractor shall forward a copy of the request to the minority/women business named on the MWBU-P. After investigating the request, the Compliance and Enforcement Division shall decide if it should authorize the request for substitution. The Awarding Authority shall not under any circumstances authorize a request if the Compliance and Enforcement Division determines that the purpose of the request is primarily to engage another Minority/Women Business Enterprise at a price lower than the Minority/Women Business Enterprise listed on the MWBU-P. The Compliance and Enforcement Division shall determine whether the proposed substitution is a bona fide Minority/Women Business Enterprise.

3. ACCESS TO INFORMATION: The general contractor shall provide all information and reports required at the request of either the Awarding Authority, Boston Employment Commission or the Compliance and Enforcement Division, and shall permit access to its facilities and any books, records, accounts, and accounts with financial institutions, and other sources of information which the Compliance and Enforcement Division determines relates to be relevant to the determination of compliance with the requirements of this Article. ~~and shall encourage all subcontractors to provide all information and reports requested by either the Awarding Authority, Boston Employment Commission or the Compliance and Enforcement Division and shall permit access to its facilities and any books, records, accounts, and accounts with financial institutions, and other sources of information which the Compliance and Enforcement Division determines relates to be relevant to the determination of compliance with the requirements of Article III.~~ ~~and shall encourage all subcontractors to provide all information and reports requested by either the Awarding Authority, Boston Employment Commission or the Compliance and Enforcement Division and shall permit access to its facilities and any books, records, accounts, and accounts with financial institutions, and other sources of information which the Compliance and Enforcement Division determines relates to be relevant to the determination of compliance with the requirements of Article III.~~ Where such information requested is in the exclusive possession of another party who fails or refuses to furnish information, the contractor or subcontractor shall so report to the Compliance Division and shall set forth what effort was made to obtain such information.

~~Contractors on projects awarded pursuant to Massachusetts General Laws Chapter 149, sections 44A-J, and General Laws Chapter 30, sections 39A-40, shall also encourage all subcontractors to provide all information and reports requested by either the Awarding Authority, Boston Employment Commission or the Compliance and Enforcement Division, and shall permit access to its facilities and any books, records, accounts, and accounts with financial institutions, and other sources of information which the Compliance and Enforcement Division determines to be relevant to the determination of compliance with the requirements of Article III. Where such information requested is in the exclusive possession of another party who fails or refuses to furnish information, the contractor shall so report and the subcontractor is encouraged to report to the Compliance and Enforcement Division and set forth what effort was made to obtain such information.~~

D. NON-COMPLIANCE:

X 1. INVESTIGATION: Whenever the Compliance and Enforcement Division believes the contractor may not be operating in compliance with the terms of this Article, the Division shall notify the contractor, Awarding Authority, and sub-contractors, conduct an investigation and issue its findings within seven days of completion of the investigation to the Awarding Authority.

X 2. DOCUMENTED COMPLIANCE EFFORT: If the contractor desires to comply with Article III, Section A, but for reasons beyond its control cannot do so, the contractor may submit to the Compliance and Enforcement Division the reasons for its inability to comply and a proposed plan stating how it intends to meet its obligations under Section A. If the Compliance and Enforcement Division approves the plan, said plan shall govern the contractor's performance in meeting its obligations under this contract supplement.

3. HEARINGS: The Compliance and Enforcement Division may, in its discretion, hold a hearing to determine non-compliance whenever it deems appropriate. Hearings shall be informal and shall not be subject to the requirements of Massachusetts General Laws Chapter 30A (The State Administrative Procedures Act). Further actions or determinations of non-compliance may be made by the Commission as prescribed in the 1986 Ordinance Establishing the Boston Employment Commission and parties subject to its jurisdiction shall be entitled to a hearing as provided in the Ordinance.

X E. SANCTIONS/DEBARMENT: In the event that the contractor fails or refuses to comply with this Article, the Awarding Authority may impose one or more of the following sanctions as it deems appropriate to attain full and effective enforcement:

1. The suspension of any payment or part thereof due, or to become due, under the contract until such time as the contractor is able to demonstrate compliance with the terms of the contract.

2. The recovery by the Awarding Authority from the general contractor of up to but not more than 1/10 of 1% of the contract award price in the nature of liquidated damages, but not as a penalty, for each week of the contractor's non-compliance.

~~pursuant to Massachusetts General Laws Chapter 149, section 44, et seq., and General Laws Chapter 307, section 11, et seq.~~

Whenever a subcontractor is in non-compliance, the recovery of 1/10 of 1% of the subcontract price is to be assessed by the general contractor against the subcontractor in the nature of liquidated damages for each week of the subcontractor's non-compliance.

but withheld by the Awarding

3. The termination of the contract in whole or in part, unless the contractor is able to demonstrate within a time period specified by the Minority/Women Business Office its compliance with the terms of this contract, or demonstrate inability to so comply.
4. The denial to the general contractor of the right to participate in any future contracts awarded by the Awarding Authority for a period of up to three (3) years from the date the Compliance and Enforcement Division finds non-compliance. ~~With the exception of contracts awarded pursuant to the provisions of General Order Chapter 140, section 441, and General Order Chapter 20, section 201.10, the~~ and with the denial to the subcontractor of the right to participate in ~~to a sub~~ any future contracts awarded by the Awarding Authority for a period of up to three (3) years from the date the compliance office finds non-compliance.

If the Awarding Authority does not follow the recommendation of the Commission, it shall within 30 days after said recommendation state in writing to the Compliance and Enforcement Division its reason(s) for not imposing such recommendation.

P. SEVERABILITY:

The provisions of this Supplement are severable, and if any provisions are held invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair the validity of any of the remaining provisions.

ATTACHMENT E

PROPOSED ADJUSTMENTS TO MINORITY AND WOMEN OWNED BUSINESS SPECIFICATION

I. Article III, [B], (3) at the end:

"... provided however that the participation of a firm shall not be credited toward the required percentage of expenditure, unless and until such time as such firm shall be finally certified."

II. Article III, [B], (5)

- o first sentence: "Bidder shall exercise..."
- o second sentence: "Compliance and Enforcement Division, bidder does so at its own risk since the participation of such firm shall not be credited toward the required percentage of expenditures unless and until such firm is finally certified pursuant to the certification regulations. Accordingly, a certification application completed by the non-certified business shall be filed with the general bids, but the Awarding Authority by receiving the same does not represent that certification will be completed at the time of contract award."

III. Article III, [C], (1) at the end of the first paragraph:

"With each periodic payment requisition furnished by the Contractor, said Contractor shall include a completed M/WBE Payment Form (Exhibit) signed by

each M/WBE for which payment is requested, and said Contractor, which contains the base contract amount, the amount previously paid to such M/WBE, the percentage complete of the work of such M/WBE and the amount to be paid to such M/WBE from that periodic payment requisition." [See also separate insert and specification]

IV. Non-Compliance III [D]

1. Whenever it is determined that the contractor or subcontractor may not be operating in compliance with the terms of this Article, the Awarding Authority or EDIC/JCS shall notify such Contractor, or Subcontractor and any other interested party in writing of such determination, setting forth in reasonable detail the facts and circumstances upon which determination is made and request that the party so notified make written response to such notification within ten (10) days. The Awarding Authority or EDIC/JCS on the basis of the notice and response and such other information made available to it, shall determine if non-compliance exists.

2. If a Contractor or Subcontractor desires to comply with Article III, Section A, but asserts that it cannot for reasons beyond its control, amply demonstrated, it may submit to the Awarding Authority or EDIC/JCS, as the case may be, in addition to the reasons for non-compliance, a proposed plan, in writing, detailing how it intends to meet its obligations under Section A. If such plan is approved said plan shall govern the

contractor's or subcontractor's performance in meeting its obligation hereunder. Failure to comply with such plan may result in the immediate imposition of any remedies or sanctions available without further need for notice or opportunity to respond.

3. At the request of the contractor or subcontractor, in the discretion of the Awarding Authority or EDIC/JCS, an informal hearing may be held to inquire into claims of non-compliance or the facts and circumstances surrounding the asserted inability to comply with this Article by the contractor or subcontractor. As a result of information received at such hearing, or after a determination made in accordance with sub-section 1 hereof, the Awarding Authority may take such steps available to it by law or hereunder.

4. In addition to the procedures established in subsections 1-3, the Awarding Authority may request that the compliance of any contractor or subcontractor be reviewed by the Boston Employment Commission and that said Commission, pursuant to its periodic review and sanction hearing regulations shall make findings with respect to compliance hereunder, and if appropriate make such recommendations as to the imposition of sanctions as the facts and circumstances so dictate.

V. Sanction/Debarment III [E] [See marked up Specification, Attachment "D"]

ATTACHMENT F

BOSTON RESIDENTS
CONSTRUCTION EMPLOYMENT PLAN
FOR
THE PROJECT

WHEREAS, _____ (the "Developer"), the Boston Redevelopment Authority (the "Authority") and the Boston Employment Commission ("BEC" or the "Commission") desire to bring the construction employment benefits of the _____ Project ("Project"), as hereinafter defined, to residents of the City of Boston, minorities, and women and;

WHEREAS, the Boston Employment Commission has been established by Chapter 12 of the Ordinances of 1986 as amended, (the "Ordinance"), in part to foster these goals and to see that they are realized. A copy of the Ordinance is annexed hereto as Exhibit A and incorporated by reference herein, and;

WHEREAS, the Mayor's Executive Order of July 12, 1985, entitled "Executive Order Extending the Boston Residents Jobs Policy", and the Development Impact Project Agreement between Developer and Authority pertaining to the Project dated _____, 199_____, each require the Developer to prepare and submit and the Authority to approve a

Boston Residents Construction Employment Plan ("Plan");

NOW, THEREFORE, the Developer, the Authority, and the Commission do hereby agree that the following approved Boston Residents Construction Employment Plan which shall take effect as a binding obligation upon all parties shall be as follows:

Section I: DEFINITIONS

As used in this Plan, the following terms shall have the meanings set forth below. Capitalized terms used in this Plan without definition which are defined in the Ordinance or Commission Regulations shall have the meanings ascribed to them in the Ordinance or in Commission Regulations.

- 1.1 Contractor: The general contractor for the project engaged from time to time by the Developer, and, where the context requires, any subcontractor thereto.

- 1.2 On-Site Monitor: an individual employed by the Contractor whose responsibility will be (i) to serve as compliance officer for the purpose of pursuing the Boston Residents Employment Standards and (ii) the day-to-day implementation of this Plan. As used in paragraphs 3.5 and 3.6 the phrase "On-Site Monitor" shall also include the individual designated by each subcontractor to serve as compliance officer for the purpose of pursuing the Boston Residents Employment Standards.

1.3 Project: The [construction, rehabilitation and/or expansion] of [] with [] uses, containing approximately [] square feet of gross floor area on a parcel of land bounded by [, , and].

Section II: GENERAL REQUIREMENTS

2.0 It shall be the Developer's obligation to use Best Efforts to ensure that the Boston Residents Construction Employment Standards are met by its Contractor and any subcontractor of such Contractor in constructing the Project.

2.1 The Developer shall incorporate into its construction contract with Contractor and shall require Contractor to incorporate into each of its subcontracts provisions requiring that Contractor and each subcontractor engaged in construction in connection with the Project comply with the Boston Residents Construction Employment Standards and this Plan. The Authority or the Commission, may also direct the Developer to enforce such provisions. The incorporation by reference of this Plan into any such construction contract or subcontract shall satisfy such obligation.

2.2 Documentation of the Developer's compliance herewith shall be maintained by the Developer; documentation of the Contractor's and subcontractor's compliance

herewith shall be maintained by the On-Site Monitor. The Developer shall provide copies of documentation maintained by it, and that maintained by the On-Site Monitor to the Commission as required herein or as requested from time to time by the Authority or the Commission.

- 2.3 The Developer shall cause the Contractor to prepare a projection of work force needs over the course of construction of the Project and to complete the Projected Work Force Form attached hereto as Exhibit B, and incorporated herein by reference. Contractor shall update such projection periodically during the course of construction of the Project, but shall not be required to do so more frequently than quarterly, except when required by the Commission based on reviews of project compliance conducted as set forth in Section 2.4.
- 2.4 The Commission pursuant to regulations adopted by it shall make determinations as to compliance by Developer and Contractor with the Boston Residents Construction Employment Standards. Such determination may be made at time intervals as set out in one of the following two schedules, the Commission reserving the right to utilize the schedule which allows more frequent determinations:
 - (1) When the Project is 25, 50, 75 and 100 percent complete, or,
 - (2) Every three months from the date of the commencement of construction of the Project.

"Percent complete" shall be measured by the percentage of the total worker hours expected to be worked on the Project as set forth in the projection of work force needs shown on the Projected Work Force Form submitted pursuant to paragraph 2.3.

- 2.5 The Developer shall maintain, and shall cause Contractor and its subcontractors to maintain records necessary to ascertain compliance with this Plan for one (1) year after the issuance of a Certificate of Occupancy for the shell and core of the Project.
- 2.6 The Developer shall meet with the Contractor no less frequently than weekly throughout the period of construction of the Project to review the Construction Employment Standards. The Developer shall record and maintain the minutes of such meetings and forward copies thereof to EDIC/JCS within ten (10) calendar days of such meetings.
- 2.7 The Developer shall require that the Contractor and each subcontractor designate an individual to serve as compliance officer for the purpose of pursuing the Boston Residents Construction Employment Standards.

Section III: PROCEDURES

- 3.0 The Developer shall furnish to the Authority and the Commission the name, title, business address and telephone number of the person designated as the On-Site Monitor, and of the compliance officer so designated by each subcontractor.
- 3.1 Prior to the start of construction, the Developer and the Contractor shall meet with the representative of the Commission for the purpose of discussing and agreeing upon the methods and procedures for the implementation of the provisions of this Plan. Such meeting (the "Pre-Construction Conference") shall be attended by subcontractors to the Contractor then selected, if any, who shall have been notified by mail of the time, place, and purpose of such Pre-Construction Conference at least three (3) days in advance thereof.
- 3.2 Prior to the start of construction, the Contractor and each subcontractor to the Contractor then selected, if any, shall meet with appropriate representatives of the construction trades unions, the Commission, and the Awarding Authority for the purpose of reviewing the Boston Residents Construction Employment Standards and the estimated employment requirement for construction workers over the course of construction of the Project.

3.3 Within three (3) days after the employment or assignment of a worker to work on the Project, the Contractor and each subcontractor will obtain from each such worker a completed and signed Residency Verification Form in the form attached hereto as Exhibit C. The Residency Verification Form shall be submitted to the Commission together with the first Weekly Utilization Report on which such worker's employment is first reported. If the Contractor or the subcontractor shall have requested a worker to complete such Residency Verification Form and the worker shall have refused to do so, in lieu of such Residency Verification Form the Contractor or subcontractor shall submit a sworn statement to the effect that the worker had been requested to complete and sign such form but refused.

3.4 One week following the commencement of construction of the project and each week thereafter until such work is completed the On-Site Monitor shall complete and submit to the Commission for the week just ended Weekly Utilization Reports in the form attached hereto as Exhibit D. In lieu of submitting the form attached hereto, the On-Site Monitor may submit payroll records containing the same information as is required on the form attached hereto as Exhibit D.

3.5 All person applying directly to the Contractor or any subcontractor for employment in construction of the Project who are not employed by the person to whom application for employment is made shall be referred by such person to the Commission. The On-Site Monitor shall forward in writing to the Commission,

within two business days of receipt thereof, the names, home addresses and telephone numbers of all persons applying directly to the Contractor or any subcontractor for employment in construction of the Project who are not employed by the person to whom application for employment is made. The On-Site Monitor shall keep a written record of all referrals made pursuant to this paragraph 3.5 of any person who was referred to the Contractor or any subcontractor by EDIC/JCS but was not hired, and the reasons why any person so referred was not hired. It shall be a sufficient reason for failure to hire any person so applying or referred that employment of such person would not comply with any union security clauses contained in any applicable collective bargaining agreements to which construction of the Project is subject.

- 3.6 Each request for qualified construction workers made by the Contractor or any subcontractor to a union hiring hall, business agent, or contractor's association shall contain a recitation of the Boston Residents Construction Employment Standards in the Form attached hereto as Exhibit E and a request that referrals for construction positions be referred in the same proportion as such Boston Residents Construction Employment Standards; provided, however, that if at the time of any such labor request the requesting party's work force composition falls short of the Boston Residents Construction Employment Standards in any one or more categories, such labor request shall seek referrals in such proportion among such categories as would be necessary to more fully achieve the proportions set forth in

the Boston Residents Construction Employment Standards. In the event that the union hiring hall, business agent or contractor's association to whom or which such a request has been made fails to fully comply with such request, the requesting party's On-Site Monitor in writing shall seek written confirmation from the union hiring hall, business agent, or contractor's association that there are insufficient workers in the categories specified in such request then shown on the list of unemployed workers maintained by such union hiring hall, business agent or contractor's association. Copies of any confirmation so obtained shall be submitted forthwith to the Commission. Copies of any request for qualified workers made at a time that the requesting party's work force composition falls short of any one or more of the Boston Residents Construction Employment Standards shall be forwarded contemporaneously to the Skills Bank.

- 3.7 Representatives of the Commission may visit the site of the Project periodically during normal working hours to verify the information in the Weekly Utilization Reports, Residency Verification Forms, or other documentation submitted by the Contractor or the Developer. Such representatives shall comply with all safety and site control requirements imposed by the Contractor.

Section IV: DETERMINATION OF COMPLIANCE

- 4.0 Failure by the Developer, the Contractor or any subcontractor, as the case may be, as determined by the Commission at the determination intervals set forth in

paragraph 2.4 hereof, (i) to comply with this Plan and the Boston Residents Construction Employment Standards contained herein, or (ii) to use Best Efforts in attempting to comply with the Plan or the Boston Residents Construction Employment Standards, shall constitute non-compliance herewith. Any independent determination by the Authority of non-compliance as herein defined shall be made only after the Authority has held a public hearing upon the issue of such non-compliance, notice of which shall have been given in writing to the Developer and the Contractor of at least fourteen (14) days prior to such hearing.

Section V: SANCTIONS

5.0 Pursuant to and in accordance with the Ordinance, the Developer shall deposit into an escrow established by the Commission or the Authority an amount in cash or other suitable security equal to one tenth of one percent (0.1%) of the total cost of construction as stated in the building permit application for the Project. Such deposit shall be made prior to the issuance of a [Certificate of Occupancy] [building permit] [no later than receipt of Permanent Financing] for the Project. Such deposit shall secure obligation of the Developer to pay, or cause the Contractor to pay, any fines recommended by the Commission by reason of the non-compliance herewith of the Developer or Contractor, as the case may be, and shall be held until the Commission has issued a Certificate of Compliance indicating that the Developer and Contractor has complied with this Plan or have satisfied any fines

recommended by the Commission. Failure to deposit such sum shall itself be deemed non-compliance and shall be grounds for the imposition of sanctions.

- 5.1 All fines recommended by the Commission in accordance with the Ordinance shall be deemed imposed upon the Developer by the Authority in its capacity as the contracting agency within the meaning of the Ordinance.
- 5.2 The Developer and Contractor shall be subject to such sanctions as are authorized by the Ordinance.

Section VI: MISCELLANEOUS

- 6.0 The provisions of this Plan are severable, and if any shall be held invalid, unconstitutional or otherwise unenforceable by any court of competent jurisdiction, the decision of such court shall not or impair any of the remaining provisions.
- 6.1 This Plan shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- 6.2 All notices required or permitted to be given under this Plan shall be in writing signed by duly authorized officers, and shall be deemed delivered if mailed, postage

prepaid, by registered or certified mail, return receipt requested, or delivered by hand to the principal office of the party to which it is directed, which is as follows unless otherwise designated by written notice to the other party:

Developer: Company
Street
City, State Zip

with a
copy to: Representative
Street
City, State Zip

Authority: Boston Redevelopment Authority
Attn: Director's Office
One City Hall Square, 9th Floor
Boston, Massachusetts 02201

Commission: Boston Employment Commission
Attn: Executive Director
43 Hawkins Street
Boston, Massachusetts 02114

EDIC/JCS: EDIC/JCS
Attn: Director
43 Hawkins Street
Boston, Massachusetts 02114

6.3 Section titles of this Plan are for convenience of reference only and shall be disregarded in construing any provision hereof.

6.4 The provisions of this Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of the Developer, the Authority, and the Commission.

6.5 In the case of any inconsistency between the provisions of this Plan and of the Ordinance, or of the provisions of any rules or regulations which may be adopted by the Commission pursuant to the ordinance, the provisions of the Ordinance, or of such rules of regulations, shall govern.

IN WITNESS WHEREOF, the undersigned have caused this Plan to be executed and delivered this day of 199 .

[DEVELOPER]

by _____
Title

BOSTON EMPLOYMENT COMMISSION

by _____
Executive Director

EXHIBIT "A": CORRECTIVE ACTION REGULATIONS

FIRST CORRECTIVE ACTION MEETING

TO: _____
FROM: _____, Construction Monitor
DATE: _____
RE: _____ Project

It has come to the attention of the Boston Employment Commission that the performance of _____ Company is deficient in the following ways;

- 1.
- 2.
- 3.

It has been determined that a corrective action meeting is required to discuss these deficiencies and how you intend to remedy them. Please be advised that the corrective action meeting is scheduled for 199 at :00 .m. Please call to confirm that you will attend.

Sincerely,

Construction Monitor

cc: Pablo Calderon, BEC Executive Director
Nancy Snyder, BEC Deputy Director
Frank Jones, BEC Chairman

* Separate letters should go to the Contractor and Developer - the list of deficiencies may also differ.



EXHIBIT "B": CORRECTIVE ACTION REGULATIONS

MINUTES OF CORRECTIVE ACTION MEETING

Among

_____ and _____

held _____

_____, representing _____

_____, representing _____

_____, representing _____

PROJECT STATISTICS

[including the hours, percentages or

M/WBE statistics that are the

subject matter of the meeting]

BEC

Boston Employment Commission
Frank N. Jones, Chairman
Ann Donner
Thomas McIntyre
Nora Moran
Van Lan-Truong
Luis Prado
Walter Williams

NJT

Neighborhood Jobs Trust
Councilor Thomas Menino
Lee Jackson
Nancy Snyder

BTC

Boston Technical Center
Donald A. Gillis, Chairman
Marguerite H. Connaughton
William Doherty
Thomas R. Howley, Esq.
Michael O'Neal
Arthur F. Snyder

*Exhibit B: Corrective Action Regulations
Example: Minutes of Corrective Action Meeting*

AREAS OF DISCUSSION:

1. (from invitation letter)

EXPLANATION OF DESCRIPTION:

AREAS OF AGREEMENT OR RESOLUTION:

discuss proposed remedy for a deficiency, e.g.

- * plumbing subcontractor agrees to hire women and residents by _____
- * electrician will contact Jobsbank for _____

MILESTONE DATES:

(dates by which corrective action is to occur

FURTHER ACTION:

The undersigned concurs in the accuracy of the Corrective Action described and the dates by which it is to occur.

Developer

Contractor

If you do not concur with the accuracy of these minutes, please explain your disagreement and send a copy to the Compliance Monitor at EDIC/Boston within twenty (20) days of the date of the Corrective Action Meeting. Failure to do so will result in your concurrence being implied and assumed, and all such corrective actions will be required to be performed by the dates prescribed.

First Source Agreement

_____ (the "Developer") is [engaged in the development of] [is the owner of] _____ (the "Development"). Pursuant to a Memorandum of Understanding by and among the Developer, the City of Boston and the Boston Redevelopment Authority dated _____, setting forth Developer's Employment Opportunity Plan, Developer has agreed to enter into this First Source Agreement with the Economic Development and Industrial Corporation/Mayor's Office of Jobs and Community Services ("EDIC/JCS") on behalf of the EDIC/Placement Unit program in which EDIC/JCS participates.

NOW, THEREFORE, the Developer and EDIC/JCS agree that, for the period from the date hereof through [10 years] in seeking qualified employees to fill job vacancies and new employment positions for operating, security, maintenance and management personnel permanently assigned to the Development who are employed by any service, maintenance, security or management agent or independent contractor engaged by the Developer, whether such positions be full-time, part-time or seasonal, Developer shall

follow the following procedures:

A. Prior to announcing or advertising the availability of an employment position created by vacancy of an existing position or of a new employment position at the Development in any communications medium other than compliance with internal posting procedures or with any employment or referral agency, the Developer will notify the EDIC/Placement Unit of such position, including a general description of the position and Developer's minimum requirements for qualified applicants for such position. The Developer shall refrain from such announcement or advertisement for a period of five (5) business days after notification to the EDIC/Placement Unit of the availability of such position. Such five (5) day period is hereinafter referred to as the Advance Notice Period."

B. Upon receipt from the Developer of a notice of an employment position, the EDIC/Placement Unit shall refer to the Developer candidates for employment whom the EDIC/Placement Unit believes are qualified for the position and who meet the Developer's minimum requirements for such a position, and shall make arrangements for the person or persons referred to be interviewed by the Developer within the Advance Notice Period. In the

event that the EDIC/Placement Unit believes that it is unable to refer qualified candidates for such position within the Advance Notice Period, it shall so inform the Developer, thereby waiving the obligation of the Developer to refrain from further announcement or advertisement to fill such position during the balance of the Advance Notice Period.

C. Nothing contained herein shall prevent the Developer from filling job vacancies or newly created positions without compliance with the foregoing procedures by transfer or promotion from its existing staff or from a file of qualified applicants maintained by the Developer; provided, however, that the Developer shall give first consideration to those applicants in such file previously referred by the EDIC/Placement Unit. Further, nothing contained herein shall be construed to require Developer or any service, maintenance, security or management agent or independent contractor engaged by the Developer to hire any candidate referred by the EDIC/Placement Unit.

D. The Developer shall incorporate the provisions of this First Source Agreement in all contracts, agreements, and purchase orders for labor with any service, maintenance, security or management agent or independent

contractor engaged by the Developer whose personnel will be permanently assigned to the Development and shall obligate such agent or independent contractor to comply with the procedures set forth in Paragraph A through C hereof.

Executed this _____ day of _____, 1992.

DEVELOPER

By: _____

CITY OF BOSTON ACTING BY AND THROUGH
THE ECONOMIC DEVELOPMENT AND INDUSTRIAL
CORPORATION OF BOSTON/MAYOR'S OFFICE OF
JOBS AND COMMUNITY SERVICES

By: _____

First Source Agreement

_____ (the "Developer") is [engaged in the development of] [is the owner of] _____ (the "Development"). Pursuant to a Memorandum of Understanding by and among the Developer, the City of Boston and the Boston Redevelopment Authority dated _____, setting forth Developer's Employment Opportunity Plan, Developer has agreed to enter into this First Source Agreement with the Economic Development and Industrial Corporation/Mayor's Office of Jobs and Community Services ("EDIC/JCS") on behalf of the EDIC/Placement Unit program in which EDIC/JCS participates.

NOW, THEREFORE, the Developer and EDIC/JCS agree that, for the period from the date hereof through [10 years] in seeking qualified employees to fill job vacancies and new employment positions for operating, security, maintenance and management personnel permanently assigned to the Development who are employed by any service, maintenance, security or management agent or independent contractor engaged by the Developer, whether such positions be full-time, part-time or seasonal, Developer shall

follow the following procedures:

A. Prior to announcing or advertising the availability of an employment position created by vacancy of an existing position or of a new employment position at the Development in any communications medium other than compliance with internal posting procedures or with any employment or referral agency, the Developer will notify the EDIC/Placement Unit of such position, including a general description of the position and Developer's minimum requirements for qualified applicants for such position. The Developer shall refrain from such announcement or advertisement for a period of five (5) business days after notification to the EDIC/Placement Unit of the availability of such position. Such five (5) day period is hereinafter referred to as the Advance Notice Period."

B. Upon receipt from the Developer of a notice of an employment position, the EDIC/Placement Unit shall refer to the Developer candidates for employment whom the EDIC/Placement Unit believes are qualified for the position and who meet the Developer's minimum requirements for such a position, and shall make arrangements for the person or persons referred to be interviewed by the Developer within the Advance Notice Period. In the

event that the EDIC/Placement Unit believes that it is unable to refer qualified candidates for such position within the Advance Notice Period, it shall so inform the Developer, thereby waiving the obligation of the Developer to refrain from further announcement or advertisement to fill such position during the balance of the Advance Notice Period.

C. Nothing contained herein shall prevent the Developer from filling job vacancies or newly created positions without compliance with the foregoing procedures by transfer or promotion from its existing staff or from a file of qualified applicants maintained by the Developer; provided, however, that the Developer shall give first consideration to those applicants in such file previously referred by the EDIC/Placement Unit. Further, nothing contained herein shall be construed to require Developer or any service, maintenance, security or management agent or independent contractor engaged by the Developer to hire any candidate referred by the EDIC/Placement Unit.

D. The Developer shall incorporate the provisions of this First Source Agreement in all contracts, agreements, and purchase orders for labor with any service, maintenance, security or management agent or independent

contractor engaged by the Developer whose personnel will be permanently assigned to the Development and shall obligate such agent or independent contractor to comply with the procedures set forth in Paragraph A through C hereof.

Executed this _____ day of _____, 1992.

DEVELOPER

By: _____

CITY OF BOSTON ACTING BY AND THROUGH
THE ECONOMIC DEVELOPMENT AND INDUSTRIAL
CORPORATION OF BOSTON/MAYOR'S OFFICE OF
JOBS AND COMMUNITY SERVICES

By: _____

Memorandum of Understanding

Memorandum of Understanding as of the _____ day of _____, 1992, by and between the City of Boston (the "City"), and the _____ (the "Developer").

The Developer is the developer of the _____, a _____ square foot project located at the _____ and including _____ (the "Development").

The Developer is a party to the Development Impact Project Agreement (the "DIP Agreement"), a Cooperation Agreement, and a Residents Construction Employment Plan (collectively the "Development Agreements"). The Development has been reviewed by the Boston Redevelopment Authority (the "BRA") in accordance with Article 31 of the Boston Zoning Code, and a Final Adequacy Determination under said Article 31 has been issued.

Pursuant to the Cooperation Agreement and a Final Adequacy Determination, the Developer has agreed to formulate and submit to either the City or to the BRA a voluntary employment opportunity plan, the purpose of which is to detail the Developer's good faith efforts to achieve a goal that fifty percent (50%) of certain employment opportunities created in the office and retail

segments of the Development will be made available to Boston residents.

Working in cooperation with the Economic Development and Industrial Corporation of Boston/Mayor's Office of Jobs and Community Services ("EDIC/JCS"), the Developer has formulated such a plan, and has agreed to pursue the plan in the Development.

The employment opportunity plan set forth in this Memorandum of Understanding recognizes that substantially all of the entry level new job opportunities to be created in the office and retail segments of the Development will be created and filled by tenants of the Development. Therefore, the following employment opportunity plan (the "Plan") focuses upon steps which a Developer as landlord can take to urge and encourage its tenants to hire Boston residents for new job openings. The Plan details two basic approaches to that endeavor, the first being fulfillment of a leadership role in which the Developer/landlord utilizes the employment training and referral resources available in the City of Boston, and the second being acting as a conduit to Tenants for information about those resources. The following paragraphs set forth the Employment Opportunity Plan:

I. Undertakings by Developer

A. With respect to all persons employed by Developer in connection with the operation, management and maintenance of, and provision of security to, the Development, the Developer will pursue as a goal the employment of Boston residents in fifty percent (50%) of the work force employed at the Development site. Persons employed by any agent or independent contractor providing maintenance, management, security or similar services whose personnel are permanently assigned to and work at the Development shall be considered employed by a Developer for the sole purpose of implementing the goal of this paragraph.

B. The Developer will enter into a First Source Agreement with EDIC/JCS substantially in the form attached to this Memorandum of Understanding as Exhibit "A".

C. The Developer will participate, and indicate such participation by execution of the appropriate letter of intent or pledge card, in the form attached to this Memorandum of understanding as Exhibits "B", and "C", in the following programs of Private Industry Council (PIC):

1. Summer Jobs Program
2. The Boston Compact

In addition, the Developer will meet with a representative of the PIC for the purpose of exploring opportunities to participate in other PIC initiatives.

D. The Developer will assign or cause to be assigned to the management staff for the Development a liaison officer who shall be responsible for compliance with Developer's ongoing obligations under the Plan.

11. Dissemination of Information to Tenants

A. Following to the final execution and delivery of a lease for space in the office and retail segments of the Development occurring after the date hereof, the Developer will send to the tenant thereunder a letter substantially in the form of Exhibit "D" to this Memorandum of Understanding. The tenants under the new leases of office and retail space in the Development are hereafter referred to as "Tenants". Such letter will transmit the

employment services guide entitled " _____" annexed to this Memorandum of Understanding as Exhibit "E", which has been produced by and at the expense of various developers with the cooperation of EDIC/JCS.

B. During the month of _____ in each year through and including _____, the Developer will solicit from the Tenants statistical information concerning the number of new employees hired by Tenant during the preceding calendar year and the percentage thereof who are Boston residents. Such information will be transmitted to the City through EDIC/JCS and the BRA by the Developer no later than September 30th in each such year.

III. Continuing Joint Efforts

The Developer will participate in annual meetings with various other developers, as scheduled by EDIC/JCS through 1996 to meet with EDIC/JCS for the purpose of updating and revising the Employment Services Guide. Upon each such update or revision to the Employment Services Guide, the Developer will redistribute the Employment Services Guide, or supplementary

or substitute pages thereto, to each Tenant in the office and retail segments of the Development, accompanied by a transmittal letter formulated by the Developer at the time such update or revision is prepared.

Recognizing that this plan is entered into voluntarily by the Developer and the City as a commitment to the economic health of the City and its residents, the execution of this Memorandum of Understanding subscribing to the foregoing Employment Opportunity Plan by the Developer is hereby recognized by the City and the BRA to satisfy each and every obligation of the Developer under the Development Agreements and under Article 31 and the Final Adequacy Determination to formulate such a Plan. The foregoing Employment Opportunity Plan is hereby approved by the City and the BRA. The Developer hereby agrees to fulfill all of the undertakings and responsibilities imposed upon a Developer by the Plan from the date hereof and including July 31, _____. This Memorandum of Understanding shall be binding upon and inure to the benefit of the successor owner of the Development.

EXECUTED the date first above written.

Signature Page Attached To:
Memorandum of Understanding

Developer: Name
Attn:
Address 1
Address 2

Development: Name

Description of Development Agreement:

Cooperation Agreement dated _____ between the BRA and the Developer

Paragraph or Section of Development Agreement pursuant to which this Memorandum of Understanding is required:

Paragraph 13 of the Cooperation Agreement and Section VIII of the Technical Addendum to the Final Adequacy Determination dated

DEVELOPER NAME

ECONOMIC DEVELOPMENT AND
INDUSTRIAL CORPORATION OF
BOSTON/MAYOR'S OFFICE OF JOBS AND
COMMUNITY SERVICES

By: _____
Representative name
Title

By: _____
Name
Title

